

ADOT File No. JPA 02-177- **Amendment 1**
AG Contract No. KR03-0166TRN
Project: TEA 206- -(016)A
TRACS No. 191 CH 24 H4942 01D, 01C
Section: US 191 – Elfrida Multi-Use Path
Funding Source: Item # 50499

**AMENDMENT No. 1
INTERGOVERNMENTAL AGREEMENT**

BETWEEN
THE STATE OF ARIZONA
AND
COCHISE COUNTY

AMENDMENT No. 1 JPA 02-177 is entered into this date of March 20th, 2007, Attorney General No. KR03-0166TRN, Original Agreement filed with the Secretary of State May 13, 2003, file No. 25993, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the COUNTY OF COCHISE, acting by and through its BOARD OF SUPERVISORS (the "County").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 and 11-952 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The County is empowered by Arizona Revised Statutes Section 11-251 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the County.

**THE PARTIES HERETO AGREE TO AMEND THE FOLLOWING LANGUAGE TO AGREEMENT
02-177:**

RECITAL 3 shall be deleted and replaced with the following language:

3. This Transportation Enhancement Agreement with the Cochise County is to construct a pedestrian pathway in the business district in Elfrida, along US 191 from MP 24.51 to MP 25.29 hereinafter referred to as the "Project". The State shall bid and administer the construction of the Project and the County shall be responsible for maintaining the Project.

NO. 28802
Filed with the Secretary of State
Date Filed: 5-20-07
Janice K. Brewer
Secretary of State
By: ABC

The work embraced by this Agreement and the estimated costs are as follows:

Design TRACS No. 191 CH 24 H4942 01D

Estimated Design Cost	\$180,000.00
Estimated Federal Aid Funds @ 94.3%	\$160,311.00
Estimated State Funds @ 5.7%	\$ 19,689.00

Construction TRACS No. 191 CH 24 H4942 01D

Estimated Construction Cost	\$445,000.00
Estimated Federal Aid Funds @ 94.3%	\$419,635.00
Estimated State Funds @ 5.7%	\$ 25,365.00

Estimated Total State Funds for Design and Construction \$ 45,054.00

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

The following language under the **SCOPE OF WORK SECTION** for the State and County has been deleted and replaced:

II. SCOPE OF WORK

1. The State will:

a. Submit a program to the Federal Highway Administration (FHWA) containing the above-mentioned Project with the recommendation that it be approved for construction.

b. Prepare plans, specifications and an estimate for the Project and submit them to the County for comments as appropriate. Construct the Project approved by FHWA, if such funds are available for construction. Be the designated authorized agent for the County and proceed to advertise for, receive and open bids with the aid and consent of the County and the FHWA. Enter into a contract(s) with a firm(s) to whom the award is made for the construction of the Project. Such Project is to be performed, completed, accepted and paid for in accordance with the instructions and requirements of the County and the Standard Specifications for Road and Bridge construction of the Arizona Department of Transportation.

c. Request the maximum Federal funds available including construction, engineering and administration costs. Project will be constructed by the State, using State and Federal Funds.

d. Not be obligated to maintain this Project, should the County fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

2. The County will:

a. Review the design documents required for construction of the Project, and provide comments to the State as appropriate.

b. As an annual item in the County budget, the County shall provide for the proper maintenance of the Project including all of the Project components.

i. Maintenance will consist of keeping the sidewalk surface and surrounding areas free of all debris, undesirable weeds, grasses, trash and litter. The sidewalk surfaces will be repaired and replaced as necessary to correct trip hazards and any erosion around the sidewalk will be maintained to the final grade at the completion of the Project. Maintenance shall also include repair or replacement of sidewalk signage constructed with the project all at the County's expense.

c. Not make any changes, additions or deletions without written approval of the State. All maintenance work shall be conducted in a manner to minimize traffic congestion and interference with through traffic. All traffic control will meet the requirements of the Arizona Department of Transportation's "Uniform Traffic Control Manual".

d. Allow free public access to the Project improvements during normal business hours.

The following language under the **MISCELLANEOUS PROVISION SECTION** for the State and County has been deleted and replaced:

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion and reimbursements; provided herein. However, any provisions for maintenance, and electrical power for the pedestrian pathway provided by the County shall be perpetual. This Agreement may be cancelled at any time prior to the award of a Project construction contract, upon thirty-days (30) written notice to either party. It is understood and agreed that, in the event the County cancels this Agreement, the State shall in no way be obligated to maintain said Project

2. This Agreement shall become effective upon filing with the Secretary of State.

3. This Agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

4. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

5. In the event of any controversy which may arise out of this Agreement, the parties hereby agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

6. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

7. Non-Availability of Funds: Every payment obligation of the State and County under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State and County at the end of the period for which the funds are available. No liability shall accrue to the State and County in the event this provision is exercised as a result of termination under this paragraph.

8. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue - 616E
Phoenix, AZ 85007
FAX: 602-712-7424

Cochise County
Board of Supervisors
1415 W. Melody Lane, Building G
Bisbee, AZ 85603


9. Attached hereto and incorporated herein is the written determination of each parties legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.


IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

COCHISE COUNTY, ARIZONA

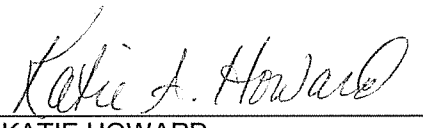
STATE OF ARIZONA

Department of Transportation

By 
RICHARD SEARLE
Chairman of the Board of Supervisors

By 
SAM MAROUFKHANI, P.E.
Deputy State Engineer, Development

ATTEST:

By 
KATIE HOWARD
Clerk of the Board

G:02-177-Enhancement-Cochise County
Amendment One December 7, 2006 -ly
Final January 3, 2007-ly

Board of Supervisors

Patrick Call
Chairman,
District 1

Paul Newman
District 2

Leslie E. Thompson
District 3



Jody N. Klein
County Administrator

Nadine Parkhurst
Clerk

RESOLUTION NUMBER 03- 20

APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION FOR THE CONSTRUCTION AND MAINTENANCE OF THE ELFRIDA MULTI-USE PATH

WHEREAS, the citizens of Elfrida have made a commitment to improve their community through the development of a landscaped, multiple-use path way along U.S. Highway 191 in Elfrida, and

WHEREAS, the State of Arizona has agreed to provide funding for this project and to assume the responsibility for the design and construction of these improvements; and

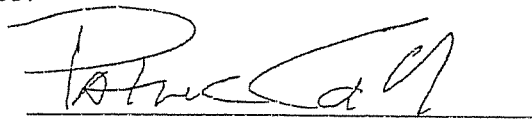
WHEREAS, pursuant to this Agreement, the County of Cochise will be legally responsible for the maintenance of these improvements during the term of this Agreement, and

WHEREAS, various citizens and groups in the Elfrida area have made commitments to assist the County by providing services and resources for the maintenance of this project, to limit any burdens that this project may impose on the County; and

WHEREAS, it is in the best interests of all the citizens of this County for the County to cooperate and assist, in the manner proposed, in these significant improvements for this area of Cochise County,

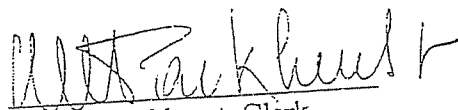
NOW THEREFORE BE IT RESOLVED THAT the Board of Supervisors of Cochise County does hereby approve the Intergovernmental Agreement with the Arizona Department of Transportation for the Elfrida Multi-Use Path on U.S. 191, AG Contract No. KR03-0166TRN, and authorizes the Chairman to sign this Agreement.

PASSED, APPROVED AND ADOPTED by the Cochise County Board of Supervisors, this 23 day of April, 2003.

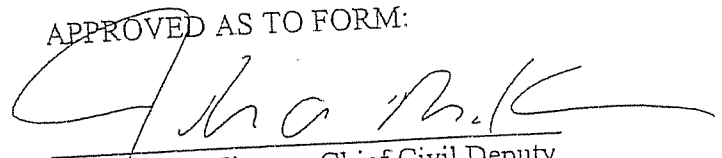

Patrick Call, Chairman
Cochise County Board of Supervisors

RESOLUTION NO. 03- 20

ATTEST:


Nadine Parkhurst, Clerk

APPROVED AS TO FORM:


John A. MacKinnon, Chief Civil Deputy
County Attorney


JPA 02-177

ATTORNEY APPROVAL FORM


COCHISE COUNTY

I have reviewed the above referenced proposed Intergovernmental Agreement, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and COCHISE COUNTY, declare this Agreement to in proper form and within the powers and authority granted to the County under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 23rd day of January, 2007.



Attorney

<p>TERRY GODDARD Attorney General</p>	<p> OFFICE OF THE ATTORNEY GENERAL STATE OF ARIZONA</p>	<p>CIVIL DIVISION TRANSPORTATION SECTION Writer's Direct Line: 602.542.8855 Facsimile: 602.542.3646 E-mail: Susan Davis@azag.gov</p>
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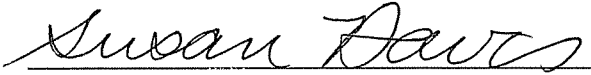
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR03-0166TRN (**JPA 02-177, Amendment No. 1**), an Agreement between public agencies, i.e., The State of Arizona and Cochise County, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: March 9, 2007

TERRY GODDARD
Attorney General


SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:mjf:1003500
Attachment